

VZCZCXYZ0001  
OO RUEHWEB

DE RUEHQT #0079/01 0422240  
ZNY CCCCC ZZH  
O R 112240Z FEB 10  
FM AMEMBASSY QUITO  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 0978  
INFO RHEFDIA/DIA WASHINGTON DC  
RHEFHLC/DEPT OF HOMELAND SECURITY WASHINGTON DC  
RHMFISS/CDR USSOUTHCOM MIAMI FL  
RHMFISS/DIRJIATF SOUTH J2  
RHMFISS/HQ USSOUTHCOM MIAMI FL  
RHMFISS/JOINT STAFF WASHINGTON DC  
RHMFISS/SECNAV WASHINGTON DC  
RUEHBO/AMEMBASSY BOGOTA  
RUEHBR/AMEMBASSY BRASILIA  
RUEHCV/AMEMBASSY CARACAS  
RUEHGL/AMCONSUL GUAYAQUIL  
RUEHLP/AMEMBASSY LA PAZ  
RUEHPE/AMEMBASSY LIMA  
RUEHQT/AMEMBASSY QUITO  
RUEKJCS/OSD WASHINGTON DC  
RUEKJCS/SECDEF WASHINGTON DC

C O N F I D E N T I A L QUITO 000079

SIPDIS

E.O. 12958: DECL: 2020/02/11  
TAGS: [MARR](#) [PREL](#) [KTIA](#) [MASS](#) [MOPS](#) [EC](#) [US](#)  
SUBJECT: FURTHER DELAYS ON AGREEMENT FOR MILITARY COOPERATION

CLASSIFIED BY: Heather M. Hodges, Ambassador; REASON: 1.4(B), (D)

¶1. (C) SUMMARY: The DCM and embassy officers met with MFA Under Secretary for Bilateral Affairs Leonardo Arizaga on February 10 to seek clarification on the reasons for the delay in the GOE's signing of a diplomatic note on status of forces for military exercises and cooperation. Arizaga explained that these were problems resulting from a review by the MFA's legal department, namely that the note, as written, would be subject to ratification by the National Assembly, and that "immunities" could not be referenced in the text of the note. Although the GOE appears to want to continue with cooperative military activities, further delays, or refusal to sign a note, may soon require USG review of what activities to continue without protections for military personnel. END SUMMARY.

¶2. (C) The DCM and representatives from the Military Group and political office met with the MFA Under Secretary for Bilateral Affairs, Leonardo Arizaga, on February 10 to determine the reasons behind the ongoing delay in the MFA completing an exchange of diplomatic notes to provide status of forces protections for temporary duty U.S. personnel involved in military exercises and cooperation in Ecuador. Arizaga noted that there were two major problems that prevented the Foreign Minister from signing a note.

#### PROBLEMS WITH THE CONSTITUTION

¶3. (C) Arizaga said the first problem was that, according to MFA lawyers, the reference to "military exercises" required approval by the Ecuadorian National Assembly and Constitutional Court, per Article 418 of the 2008 constitution, which he said states that "all treaties or other international instruments" must be approved by the National Assembly. He added that Article 419 of the constitution also required that the diplomatic note be approved by the National Assembly because of the reference to "military" activities. He warned that approval by the Assembly could take six months.

¶4. (C) While we are not legal experts, our understanding of the constitutional articles referenced by the MFA does not seem to apply in the case of an exchange of diplomatic notes regarding military exercises. Article 418 of the constitution states that "The President of the Republic subscribes or ratifies treaties or other international instruments. The President of the Republic will inform the National Assembly immediately of all treaties that have been subscribed, with precise indication as to their character and content. A treaty can only be ratified, for its later exchange or deposit (placement in the custody of a depository), ten days after the Assembly has been notified." To our knowledge, an exchange of diplomatic notes would not constitute a treaty, nor would it be signed by the Ecuadorian president (the foreign minister would sign the diplomatic note). Article 419 of the constitution states that "international treaties will require prior approval by the National Assembly in cases that:..."Establish political or military alliances." The contents of the diplomatic notes in this case do not explicitly or implicitly refer to an "alliance," either political or military. (Note: Quotations of constitutional provisions are informal embassy translations. End note.)

#### POLITICAL COMPLICATION WITH IMMUNITIES

¶5. (C) Regarding the second problem, Arizaga said that President Correa had requested in early 2009 that immunities be eliminated for all international personnel of all countries, except in the case of traditional diplomatic relations. When questioned as to the legal basis for such an impediment on immunities, MFA legal advisor referred to Article 9 of the constitution, that "Foreign persons in Ecuadorian territory will have the same rights and obligations as Ecuadorians, in accordance with the Constitution."

¶6. (C) Arizaga stated that Security Minister Carvajal and other members of the security cabinet agreed that they could not accept giving immunities to U.S. or other foreign troops. He appeared surprised when we informed him that a U.S. military exercise could involve as few as 12 servicemembers, and likely no more than 40. He added that the GOE did not grant immunities to recent Cuban and Venezuelan contingents that were much larger than the estimated 40 servicemembers we would have in country under the auspices of a hypothetical Medical Readiness Exercise (MEDRETE), which would be the largest number of any U.S. military activity covered by the diplomatic note.

¶7. (C) Arizaga admitted that this was also a political problem, and that eliminating the word "immunities" from the text of the note would help resolve the issue. The DCM responded that the term "immunities" is not used in the text of the diplomatic note, simply that U.S. personnel will be afforded "status equivalent to that provided to the administrative and technical staff of the U.S. Embassy in accordance with the Vienna Convention..."

¶8. (C) According to Arizaga, the MFA's legal department proposed three possible approaches to resolving the problem of immunities: 1) providing status to U.S. personnel equivalent to Ecuador's 12-III visa, which grants administrative and technical status, albeit only while on duty; 2) referring the legal process for any illegal acts committed by U.S. personnel covered under the note to the Ecuadorian National Court of Justice (similar to how National Assembly members would be tried); and 3) granting no immunities.

#### MOD WANTS TO KEEP THE COOPERATION

¶9. (C) The DCM said that Ecuador had already lost over \$8 million in military assistance, due to the lack of a signed agreement on military cooperation and the need to transfer funds to Haiti. Roughly an equivalent amount remained for calendar year 2010, but was also subject to being redirected elsewhere. Arizaga said that Defense Minister Javier Ponce was pushing the MFA to sign the note as soon as possible and understood the value of keeping cooperation with the U.S. He asked whether it was possible for the Ministry of Defense to sign a document with the Embassy. The DCM noted that we were looking for a signed agreement "between governments," and this did not dictate who would sign, but that the agreement must meet substantive concerns. (Note: In the Embassy's view, however, the issue of immunities and visas are under the MFA's jurisdiction, not the Ministry of Defense. End Note.)

#### NEXT STEPS

¶10. (C) Arizaga said that Ponce would raise these problems with GEN Fraser during his visit to USSOUTHCOM on February 10-11. He added that the ministers of foreign affairs, defense and security and the secretary of intelligence would meet on February 18 to determine a course of action. When asked about the possibility of signing a diplomatic note to salvage remaining cooperation for 2010, and negotiating text for a note to cover cooperation in 2011, Arizaga responded that it would be very difficult, since the document would be subject to review by the National Assembly.

#### COMMENT

¶11. (C) Although the GOE appears to want to resolve the issue, based on statements by numerous officials, the political sensitivity and ultimate responsibility of overriding a legal determination by the MFA's legal department to sign an "agreement" with the U.S may be a risk too great for the Foreign Minister in the foreseeable future. SOUTHCOM temporarily waived the need for a signed note, through March 31, on the expectation that an agreement would be reached. We will soon need to review this issue again, and possibly look at what cooperation we would want to keep, and what to cancel, in the event that no agreement is signed.

HODGES